

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

STEWART TITLE GUARANTY)
COMPANY, a Texas corporation,)
)
Plaintiff,)
)
vs.)
)
A TITLE ESCROW COMPANY, INC., an)
Illinois corporation, and K. SEAN)
McKEE, an individual,)
)
)
Defendants.)

Case No. 05-C-50116

Judge Philip G. Reinhard
Magistrate Judge P. Michael Mahoney

MOTION FOR ENTRY OF FINAL JUDGMENT ORDER

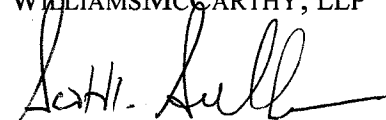
Plaintiff, Stewart Title Guaranty Company, Inc. ("Stewart"), by its attorneys, WILLIAMS MCCARTHY, LLP, moves this Court for the entry of a final judgment order and in support thereof states as follows:

1. By Order dated September 28, 2007, the Magistrate Judge entered a Report and Recommendation granting Stewart's previous Motion for Entry of Judgment Order. A copy of the Magistrate's Report and Recommendation is attached hereto as Exhibit A.
2. More than 10 days has elapsed since the entry of the Magistrate's Report and Recommendation and no objections have been filed.
3. Stewart requests this Court enter a final judgment order in the form attached hereto as Exhibit B which is consistent with the Report and Recommendation of the Magistrate.

WHEREFORE, Stewart Title Guaranty Company moves that this Court enter a final judgment order in the form attached hereto as Exhibit B.

STEWART TITLE GUARANTY COMPANY, a
Texas corporation, Plaintiff,

By: WILLIAMSMcCARTHY, LLP

By: 

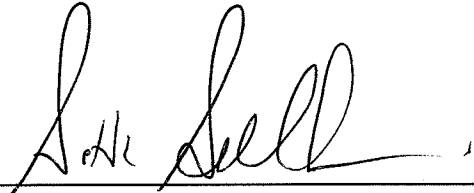
Scott C. Sullivan

CERTIFICATE OF LAWYER AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

- 1) On October 10, 2007, the foregoing document was electronically filed with the District Court Clerk via CM/ECF filing system;
- 2) Pursuant to Rule 5 of the Federal Rules of Civil Procedure, the undersigned further certifies that a copy of the foregoing document was electronically served upon the following:

Theodore Liebovich
Liebovich & Weber, P.C.
415 South Mulford
Rockford, Illinois 61108

A handwritten signature in black ink, appearing to read "S. C. Sullivan", is written over a horizontal line.

Scott C. Sullivan

Scott C. Sullivan
WILLIAMSMcCARTHY, LLP
P.O. Box 219
Rockford, IL 61105-0219
815/987-8900

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

**STEWART TITLE GUARANTY
COMPANY,**

Plaintiff,

vs.

**A TITLE ESCROW COMPANY, INC., and
K. SEAN McKEE,
Defendants.**

Case No. 05 C 50116

**Magistrate Judge
P. Michael Mahoney**

REPORT AND RECOMMENDATION

Default judgment was entered in Plaintiff's favor on July 6, 2007. The District Judge ordered that a hearing be scheduled before the Magistrate Judge on or before August 10, 2007, for the purpose of calculating damages. On July 25, 2007, Plaintiff filed a Motion for Entry of Judgment Order which was accompanied by affidavits in support. Plaintiff's Motion was taken under advisement by the Magistrate Judge on August 1, 2007.

During the August 1st motion hearing, the court attempted to schedule the damages hearing as ordered by the District Court. However, defense counsel represented to the court at that time that the defense would be incapable of preparing for a damages hearing by August 10th. In light of defense counsel's representation, the court entertained the possibility of soliciting written briefs and affidavits addressing the damages issue as an alternative to conducting the damages hearing. However, defense counsel stated that he was unwilling to waive his client's right to a damages hearing, but would consider briefing the issue if necessary. In an effort to accommodate defense counsel, the Magistrate Judge ordered that Defendant had

until September 5, 2007, to supply the court with either: 1) a written brief and affidavits addressing damages; or 2) a date certain for conducting a damages hearing.

Defendant provided neither by September 5th. Defense counsel reported that due to his client's failure to cooperate with counsel, neither a responsive brief and affidavits nor a date certain for conducting a damages hearing would be forthcoming.

In light of Defendant's failure to cooperate with defense counsel, the court's efforts to conduct a damages hearing have been frustrated and no briefs in opposition to the Plaintiff's Motion for Entry of Judgment have been received. The Magistrate Judge is left with no choice but to issue this Report and Recommendation based solely upon Plaintiff's Motion for Entry of Judgment and the affidavits attached thereto.

Having reviewed Plaintiff's Motion for Entry of Judgment, the Affidavit of Edward Tucker, the Affidavit of Scott C. Sullivan and Plaintiff's Proposed Judgment Order, the Magistrate Judge recommends the following:

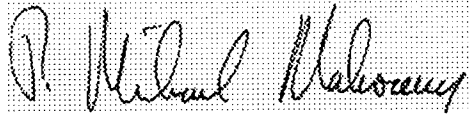
- 1) That judgment be entered in favor of Stewart Title Guaranty Company, a Texas Corporation ("Stewart Title") and against A Title Escrow Company, Inc., an Illinois Corporation ("ATEC"), pursuant to each of Counts I, II, III, IV, V, and VI of the Complaint in the amount of one million one hundred eighty nine thousand four hundred fifty four dollars and eighty eight cents (\$1,189,454.88) plus costs of suit;
- 2) That judgment be entered in favor of Stewart Title Guaranty Company, a Texas Corporation and against K. Sean McKee pursuant to each of Counts II, III, IV, V, and VI of the Complaint in the amount of one million one hundred eighty nine thousand four hundred fifty four dollars and eighty eight cents (\$1,189,454.88) plus costs of suit;
- 3) That, in light of the Temporary Restraining Order entered on June 14, 2005, which froze funds located in certain accounts maintained at Kent State Bank, Plaza Bank and Gateway Community Bank, and in light of the fact that this court converted that Temporary Restraining Order into an Agreed Preliminary Injunction Order on August 3, 2005, an injunction should be entered ordering Kent Bank and Plaza Bank to pay over all funds (up to the total judgment amount) in

any accounts maintained in the name of A Title Escrow Company, Inc., to Stewart Title Guaranty Company within five (5) days of receipt of the District Court's Judgement Order;

4) That the Clerk of the District Court be ordered to pay over the sum of fifty nine thousand two hundred twenty three dollars and fifty nine cents (\$59,223.59) to Stewart Title Guaranty Company which had previously been deposited with the Clerk pursuant to this Court's order dated February 8, 2007; and

5) That this Court retain jurisdiction over this case for purposes of enforcing the terms of the final Judgment Order.

ENTER:

A handwritten signature in black ink, appearing to read "P. Michael Mahoney", is written over a rectangular area with a light gray dot grid pattern.

P. MICHAEL MAHONEY, MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

DATE: September 28, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION**

STEWART TITLE GUARANTY)
COMPANY, a Texas corporation,)

Plaintiff,)

vs.)

A TITLE ESCROW COMPANY, INC.,)
an Illinois corporation, and K. SEAN)
McKEE, an individual,)

Defendants.)

Case No. 05-C-50116

Judge Philip G. Reinhard
Magistrate Judge P. Michael Mahoney

JUDGMENT ORDER

The Court having previously entered a default judgment against the Defendants, and after reviewing the evidence submitted, this Court enters Judgment in favor Stewart Title Guaranty Company, a Texas Corporation ("Stewart Title"), against Defendants, A Title Escrow Company, Inc., an Illinois Corporation ("ATEC"), and K. Sean McKee ("McKee") as stated herein.

THE COURT FINDS AS FOLLOWS:

1. This court has personal jurisdiction over the parties.
2. This court has subject matter jurisdiction over the claims asserted in this lawsuit.
3. This court entered a Temporary Restraining Order on June 14, 2005, which restrained ATEC and McKee from certain actions and further froze funds located in certain accounts maintained at Kent State Bank, Plaza Bank and Gateway Community Bank.
4. This court converted the Temporary Restraining Order to an Agreed Preliminary Injunction Order on August 3, 2005.

EXHIBIT B

5. That ATEC and McKee misappropriated client escrow funds as alleged in the Verified First Amended Complaint and that such conduct on the part of ATEC and McKee amounted to a defalcation while acting in a fiduciary capacity within the meaning of 11 U.S.C. § 523 (a)(4).

WHEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED as follows:

1. That Judgment is entered in favor of Stewart Title Guaranty Company, a Texas Corporation ("Stewart Title") and against A Title Escrow Company, Inc., an Illinois Corporation ("ATEC"), pursuant to each of Counts I, II, III, IV, V and VI of the Complaint in the amount of one million one hundred eighty nine thousand four hundred fifty four dollars and eighty eight cents (\$1,189,454.88) plus costs of suit.

2. That Judgment is entered in favor of Stewart Title Guaranty Company, a Texas Corporation and against K. Sean McKee pursuant to each of Counts II, III, IV, V and VI of the Complaint in the amount of one million one hundred eighty nine thousand four hundred fifty four dollars and eighty eight cents (\$1,189,454.88) plus costs of suit.

3. It is further ordered that a permanent injunction is hereby entered compelling Kent Bank and Plaza Bank to pay over all funds (up to the total judgment amount) in any accounts maintained in the name of A Title Escrow Company, Inc., to Stewart Title Guaranty Company within five (5) days of receipt of this Consent Judgement Order.

4. It is further ordered that the Clerk of the District Court pay over the sum of fifty nine thousand two hundred twenty three dollars and fifty nine cents (\$59,223.59) to Stewart Title Guaranty Company which had previously been deposited with the Clerk pursuant to this Court's order dated February 8, 2007.

5. This Court shall retain jurisdiction of this case for purposes of enforcing each and all terms of the terms of this final Judgment Order.

Date: _____

Judge Philip G. Reinhard

Prepared by:

Scott C. Sullivan
WilliamsMcCarthyLLP
P.O. Box 219
Rockford, IL 61105-0219
815/987-8900